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09/465,607	12/17/1999	TIMOTHY M. KEISER	98-HSX001-C1	9080

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EXAMINER

GRAHAM, CLEMENT B

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/465,607
Filing Date: December 17, 1999
Appellant(s): KEISER ET AL.

Thomas D. Bradshaw
Attorney Reg. No. 51,492
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 21, 2011 appealing from the Office action mailed December 16, 2010.

(1) Grounds of Rejection to be Reviewed on Appeal

Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(2) Response to Argument

A. Claims 23-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Traub et al (Hereinafter Traub , U.S Patent 6, 058, 377 in view of Shepherd U.S Patent 5, 970, 479).

The Examiner summarizes the various points raised by the Appellant and addresses them individually.

4. **Appellant's arguments** filed on 02/01/2011 has been fully considered but they not persuasive for the following reasons.

In response to Appellant's arguments that Traub and Shepherd fail to teach or suggest the steps of "setting the initial price, based on potential box office revenue for a movie." Setting an initial price for a derivative financial instrument that represents a movie in an entertainment industry..., based..., on potential box office revenue for a movie and, does not include any teaching whatsoever relating to movies or box office revenues, and receiving via a remote device a first order to buy the derivative financial instrument, comprising a stock for trading over a network," receiving via the remote device a second

Art Unit: 3691

order to sell the derivative financial instrument," setting, a market price for the derivative financial instrument based at least in part on the first order and the second order and executing a trade of the derivative financial instrument at the set market price " the Examiner disagrees with Applicant" s because these limitations were addressed as stated.

Traub teaches setting, an initial price for a derivative financial instrument, in which setting the initial price comprises, setting the initial price for the derivative financial instrument based at least in part on a potential revenue (Note abstract and see column1 lines 29-34 and column 6 lines 31-56 and column 7 lines 21-39).

Shepherd discloses the management of risk relating to specified, yet unknown, future events by enabling entities (parties) to reduce their exposure to specified risks by constructing compensatory claim contract orders on yet-to-be-identified counter-parties, being contingent on the occurrence of the specified future events (see column 4 lines 13-67 and column 5 lines 1-24 and column 9 lines 41-55 and column 18 lines 5-11) The entities submit such orders to a `system` which seeks to price and match the most appropriate counter-party, whereupon matched contracts are appropriately processed through to their maturity (see column 4 lines 13-67 and column 5 lines 1-24 and column 9 lines 41-55 and column 18 lines 5-11).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Traub to include receiving via a remote device a first order to buy the financial instrument, the derivative financial instrument comprising a stock for trading over a network, receiving via the remote device a second order to sell the derivative financial instrument; setting, using the computing device, a market price for the derivative financial instrument based at least in part on the first order

Art Unit: 3691

and the second order, in which the computing device and the remote device are in communication and executing a trade of the derivative financial instrument at the set market price taught by Shepherd in order to match and trade financial instruments.

Further when buyers and sellers are engaged in a trade of an item, the market price is the value of an asset on the price it would demand on an open market, which represent the price the asset is being bought or sold taught by Shepherd in order to match and trade financial instruments.

Traub and Shepherd fail to explicitly teach that the revenue is box office revenue, and the financial instrument is associated with a movie in an entertainment industry.

However a potential box office revenue that is based on a movie in an entertainment industry and is associated with a financial instrument would be representative of a revenue bond, because revenue bonds are issued by entities or institutions to finance different projects for example bridges, movies, and road projects, and the revenue generated (i. e, potential revenue”) from motorist using the bridge and paying tolls are committed to paying off the revenue bond, therefore financing a movie is no different than financing bridges because the fees (i. e, potential revenue”) that is paid by the patrons that attend the movie would be used in paying off the revenue bond that was used to finance the movie .

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Traub and Shepherd to include office and a movie, because financing a movie is no different than financing bridges

Art Unit: 3691

because the fees (i. e, potential revenue”) that is paid by the patrons that attend the movie would be used in paying off the revenue bond that was used to finance the movie.

5. With respect to Applicant's prima facie argument, Examiner respectfully submits that obviousness is not determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See *In re Oetiker*, 977F. 2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Hedges*, 783F.2d 1038, 1039, 228 USPQ* 685, 686 (Fed. Cir.1992); *In re Piaseckii*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir.1984); *In re Rinehart*, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Using this standard, the Examiner respectfully submits that he has at least satisfied the burden of presenting a *prima facie* case of obviousness, since he has presented evidence of corresponding claim elements in the prior art and has expressly articulated the combinations and the motivations for combinations that fairly suggest Applicant's claimed invention. Note, for example, in the instant case, the Examiner respectfully notes that each and every motivation to combine the applied references are accompanied by select portions of the respective reference(s) which specially support that particular motivation and /or an explanation based on the logic and scientific reasoning of one ordinarily skilled in the art at the time of the invention that support a holding of obviousness. As such, it is not seen that the Examiner's combination of references is unsupported by the applied prior art of record. Rather, it is respectfully submitted that explanation based on the logic and scientific reasoning of one of ordinarily skilled in the art at the time of the invention that support a holding of obviousness has been adequately provided by the motivations and reasons indicated by the Examiner, *Ex pane* Levengood,

Art Unit: 3691

28 USPQ2d 1300(Bd. Pat. App &.,4/293 Therefore the combination of reference is proper and the rejection is maintained.

For the above reasons, it is believe that the rejections should be sustained.

Respectfully submitted,

/Clement. Graham/
Examiner, Art Unit 3691
April 5, 2012

Conferees:

/Hani M. Kazimi/

Primary Examiner, Art Unit 3691

Alexander Kalinowski/AK/

Supervisory Patent Examiner, Art Unit 3691